Supreme Court of the United States

OCTOBER TERM—1949

No. 708

IB CHR SONNESEN,

Petitioner,

—v.—

PANAMA TRANSPORT COMPANY,

Respondent.

REPLY BRIEF ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

JACOB RASSNER,
Proctor for Petitioner.

ROBERT KLONSKY,
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The questions involved herein are extremely significant and should be determined by the highest tribunal of our land. The respondent, however, seeks to avoid the determination of the questions by citing cases not in point as to this Court's jurisdiction.

This Court has jurisdiction to grant the petition of Ib Chr Sonnesen as the record clearly shows that the Court of Appeals of the State of New York has fully adjudicated rights on facts not in dispute.

The complaint is framed pursuant to the Jones Act. The opinion of the Court of Appeals of the State of New York held that the jury was justified, on the evidence, in finding that the defendant's conduct toward the plaintiff was wrongful and tortious. The decision went further and held that the Jones Act could not be applied to this wrong, but that the petitioner must commence a new action by amending his complaint involuntarily so that it should be

grounded on Panamanian law. The only distinction between this remand and a new, independent action, is immunization from the statute of limitations.

The respondent relies on two cases (cited on p. 2 of respondent's brief), *Gospel Army* v. *Los Angeles, et al.*, 331 U. S. 543, 67 S. Ct. 1428; *Market Street Railway Company* v. *Railroad Commissioner of the State of California*, 324 U. S. 548, 65 S. Ct. 770, which are entirely beside the point and only refer to lack of finality when the parties are remanded to the same position as though the cases had never been tried. In the case at bar, petitioner is remanded in a worse position by reason of the fact that he is precluded by the Court of Appeals of the State of New York from proceeding under a Federal statute.

The case of *Gospel Army* v. *Los Angeles, et al., supra*, was an appeal from the Supreme Court of the State of California by reason of an injunction restraining and enjoining the defendant from interfering in the exercise of a religious liberty by means of restrictive ordinances. The facts were not stipulated or conclusive upon the lower courts as in the case at bar. The Supreme Court of California held that the lower court's action in granting the injunction was erroneous, and reversed the judgment. The Court recognized that in the State of California an unqualified reversal is effective to remand the case "for a new trial and places the parties in the same position as if the case had never been tried". As the facts were not stipulated nor were there any special procedural restrictions (see p. 1430 of opinion), this Court held that there was no finality for jurisdiction. The opinion went further however, and set forth the following as to the discretion of this Court in entertaining cases irrespective of the lack of finality expressed on the face of the judgment. Mr. Justice Rutledge stated on page 1430:

> "Increasingly this Court has become less formal in the matter of final judgments. It is no longer the rule that the face of the judgment is determinative of whether it is final. Today "the test is not whether under local rules of practice the judgment is denominated final * * * but rather whether the record shows that the order of the Appellate Court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court. * * * Department of Banking, State of Nebraska v. Pink, 317 U. S. at p. 268, 63 S. Ct. at page 235, 87 L. Ed. 254".

During the same term as the decision in the *Gospel Army* v. *Los Angeles, et al., supra,* this Court entertained jurisdiction despite the lack of finality expressed on the face of the judgment in *Richfield Oil Corporation* v. *State Board of Equalization,* 329 U. S. 69, 67 S. Ct. 156. That case was also an appeal from the Supreme Court of the State of California, and concerned a California tax and the claim that it was repugnant to Article 1, Sec. 10, Clause 2 of the Constitution of the United States of America. The case had been tried on the pleadings and stipulated facts, and the trial court found for the appellant. The Supreme Court of California ordered that the judgment "be and the same hereby is reversed" which in effect was a remand for a new trial. This Court held on p. 158:

> "The designation given the judgment by state practice is not controlling * * * ".

This Court thereupon went into the merits and reversed the Supreme Court of California. The dissent by Mr. Justice Black was not concerned with jurisdiction.

The second case cited by respondent in opposition to this Court's jurisdiction, *Market Street Railway Company*

v. *Railroad Commissioner of the State of California, supra,* is an example that "increasingly this Court has become less formal in the matter of final judgments".

In fact this Court allowed the appeal though it was prior to the finality thereof as expressed in the California Rules on Appeal. Mr. Justice Jackson writing for this Court held that a judgment is final when issues are adjudged as:

> "Our test is a practical one. When the case is decided, the time to seek our review begins to run" (p. 773).

It has been held by this Court that the possibility to obtain relief under a different statute or procedure does not affect the finality of the existing judgment. In the case of *Largent* v. *State of Texas,* 318 U. S. 418, 63 S. Ct. 667 (March 1943), on an appeal from the County Court of Lamar County, Texas, appellant had been convicted of a violation of an ordinance requiring an application for a written permit issued by the Mayor after a thorough investigation. After conviction, appellant appealed to the County Court where a trial *de novo* was had. After appellant's motions to quash the complaint on the ground that the ordinance violated the 14th amendment of the Constitution of the United States were overruled, the appellant was found guilty and fined $100. This Court recognized that under Texas practice the appellant could test the constitutionality of the ordinance under which she was convicted by a habeas corpus proceeding. The Court's opinion by Mr. Justice Reed stated on p. 669 as follows:

> "The possibility that the appellant might obtain release by a subsequent and distinct proceeding, and one not in the nature of a review of the pending charge, in the same or a different court of the State does not affect

the finality of the existing judgment or the fact that this judgment was obtained in the highest state court available to the appellant. Cf. *Bandini Petroleum Co.* v. *Superior Court,* 284 U. S. 8, 14, 52 S. Ct. 103, 105, 76 L. Ed. 136, 78 A. L. R. 826; *People of State of New York ex rel. Bryant* v. *Zimmerman,* 278 U. S. 63, 70, 49 S. Ct. 61, 64, 73 L. Ed. 184, 62 A. L. R. 785".

CONCLUSION

Upon the determination by this Court that the provisions of the Jones Act are available to an alien seaman under the circumstances involved herein, which is the primary issue, equity and good practice indicate that this Court should liberally construe the law treating with jurisdiction of this Court, and entertain jurisdiction of this petition in the furtherance of substantial justice so as to obviate useless and wasteful litigation in the state courts below.

The determination that the petitioner cannot proceed in the lower courts under and by virtue of the Jones Act is final.

The facts can no longer be disputed by reason of the decision of the Court of Appeals of the State of New York.

The Court of Appeals of the State of New York has stated in unequivocal language that the rights as provided by Congress, as set forth in 46 U. S. C. A. 688, are not available to petitioner. This is a final adjudication by the highest tribunal of the State of New York, which bars a seaman's action under the Jones Act. The remittitur does no more than impose a ministerial function on the lower state court.

To compel the petitioner to start *de novo* under a foreign law which does not afford any or sufficient relief would defeat the interests of justice and preclude an adjudication by this learned tribunal on a most substantial question of law.

Wherefore, it is respectfully urged that this learned tribunal assume jurisdiction of this case and the most significant questions involved therein, which are of compelling importance to our bench, bar, the American maritime industry and merchant marine.

Respectfully submitted,

JACOB RASSNER,
Proctor for Petitioner.

ROBERT KLONSKY,
On Petition.